

Members

Sen. Charles Meeks, Chairperson
Sen. Anita Bowser
Rep. Scott Mellinger
Rep. Ralph Foley
Mary Beth Bonaventura
Chris Beeson
Lance Hamner
Madonna Roach
Joe Hooker
Glenn Boyster
Chris Cunningham
Judge Thomas Ryan
Sharon Duke
Iris Kiesling
David Matsey
Craig Hanks
Dave Powell
Steve Cradick
Jim Brewer
Robert Chamness



PROBATION SERVICES STUDY COMMITTEE

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Authority: P.L. 131-1998

MEETING MINUTES¹

Meeting Date: August 25, 1999
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington
St., 404
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. Charles Meeks, Chairperson; Sen. Anita Bowser; Rep. Scott Mellinger; Rep. Ralph Foley; Chris Beeson; Lance Hamner; Madonna Roach; Joe Hooker; Chris Cunningham; Judge Thomas Ryan; Sharon Duke; David Matsey; Dave Powell; Jim Brewer.

Members Absent: Mary Beth Bonaventura; Glenn Boyster; Iris Kiesling; Craig Hanks; Robert Chamness; Steve Cradick.

I. Call to Order and Introduction of Committee members.

II. Expert Testimony

A. The Honorable Tom Milligan, Montgomery Circuit Court, Vice President,

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Indiana's Judges' Association, testified about the history and development of the Probation Services Study Committee. Judge Milligan made the following points:

- ◇ Sentencing statutes allow a person who commits a felony to be imprisoned but other statutes also allow sentences to be suspended. If a sentence is suspended, the court is required to place the person on probation. Not everyone should go to prison, and we could not afford to confine everyone.
- ◇ Offenders who are given suspended sentences or released early need supervision. Probation officers are used to supervise these individuals and report back to the court.
- ◇ The Probation Services Study Committee was established 1 ½ years ago in response to concerns of the judges' association and legislative leadership. The main concern was that a state agency sets probation standards, such as minimum standards for probation officer's caseloads and salaries, but the county has to pay for the probation services. This creates friction because the counties resent being directed what to do. For example, sometimes a county may need to hire more probation officers because the county does not meet the minimum caseload standards. The judges are uncomfortable because this situation causes friction at the local level.
- ◇ Last year the Committee conducted a comprehensive review of probation. The three main goals of probation are supervision, rehabilitation, and protection.
- ◇ Judges believe that supervising suspended sentences should remain with the courts. Probation officers need statewide standards, training, and qualifications. Probation officers should receive the same pay for the same work. Probation officers are appointed by the judge and paid by the county. The state should share and participate in the payment of probation officers' salaries.

Committee Questions and Discussion

Mr. Hooker asked whether probation user fees should be affected by probation officers' salaries. Judge Milligan responded that the probation user fees are set by the courts, collected by the probation office, and maintained by the county funds to be used for fee augmentation and implementation of probation services. Judge Milligan stated that sometimes these fees are also used to supplement probation officers' salaries and to hire support staff. Judge Milligan stated that it would have a negative effect if user fees were allocated for salaries at the expense of probation programs.

In response to a question by Senator Bowser about justifying probation officer salaries to the public, Judge Milligan responded that the public generally doesn't understand what probation officers do. Judge Milligan suggested making probation officers more visible in the community and to get some publicity about it. Judge Milligan stated that in his community this was accomplished by involving probation officers in a project to clean up graffiti.

Mr. Powell asked what percentage or amount of probation officers' salaries the judges' association would like to see the state pay. Judge Milligan responded that the judges think that the county should continue to be involved with the probation officers' salaries but that the state should share in the payment by way of some formula.

Judge Milligan and several Committee members discussed the court's ability to override a probation officer's recommendation. Judge Milligan noted that the court needs as much information as possible about an offender and the probation officers do a good job of providing this information.

Judge Matsey stated that his county, like most counties, adopted the minimum salary levels for probation officers that were set forth in the state guidelines. Judge Matsey stated that it is difficult to compete to get qualified people to be probation officers and then to retain them. Judge Matsey noted that probation officers' salaries are lower than teachers' salaries.

Representative Foley stated that it is his understanding that in some counties, once probation officers have some experience and training, they seek employment in another county that offers its probation officers more favorable salaries. Judge Milligan and several Committee members agreed that this is a problem. Mr. Hamner, Johnson County Prosecutor, added that he has lost probation officers to Marion County, other surrounding counties, and to police departments.

Representative Foley noted that in recent years the General Assembly has addressed the above-described problem by increasing court costs. Representative Foley questioned how many more court cost increases can be sustained in order to fund judiciary, prosecutor, and probation officer services. Representative Foley further questioned the offenders' ability to pay for these increased costs. Judge Milligan responded that if court costs and user's fees continue to increase, it will not add up to much money. Judge Milligan noted that the state makes money and the county loses money on the operation of the court system.

B. Sheriff Dave Murtaugh, President of the Indiana Sheriff's Association, Tippecanoe County Sheriff, testified about the community transition program (CTP). Note that the CTP statutes are Exhibit A. Sheriff Murtaugh testified as follows:

- ⇒ Under the CTP offenders would be delivered back to the sheriff for placement into the program. There are 92 counties in Indiana but only 58 community corrections programs. Some community corrections programs include a wide range of community corrections options including work release, house arrest, day programs. However, not all counties have these programs.
- ⇒ If an offender becomes eligible for the CTP, several issues may be raised. Some community corrections program have slots available and others do not. In addition, an offender may not have anywhere to live and may not have secured employment. In these cases, the offender is likely to remain in the county jail. However, the jails are overcrowded. The CTP statutes provide for a \$7 per diem to the community with no financial assistance for medical services. It is not possible to house an offender in the county jail for \$7 per day with no financial assistance for medical costs. This situation places a great burden back on the counties, and they have not budgeted for this situation.
- ⇒ The CTP statute requires that the offender must be sent back to the county where the offender was sentenced. However, the offender may not have any family in that area.
- ⇒ Several counties have a lot of questions about CTP and are concerned about how it will operate. There is not much available space in many of the jails. On September 1, 1999, the DOC will begin to deliver offenders to the county jails. There is not enough clarification regarding how the program is to be implemented. It is a funding liability to the counties.

⇒ An Indiana statute, IC 35-38-2.6-1 prohibits certain offenders, including sex offenders and offenders who were convicted of a nonsuspendible felony, from being placed in a community corrections program. However, the CTP statute does not recognize this previously existing statute, so it is unclear whether these offenders are eligible for the CTP.

Committee Questions and Discussion

Representative Mellinger, a former Madison County sheriff, commented that the jail in his county had to lease beds in other counties on account of overcrowding. Representative Mellinger commented that in one instance they had to use a jail that was located 160 miles away, and in some instances they had offenders housed in four different counties.

Sheriff Murtaugh stated that community corrections programs were established in the mid-1980s. Sheriff Murtaugh noted that in some counties: one community corrections program serves two counties. Each county is different in its approach to community corrections.

Representative Foley emphasized that the court is the gatekeeper of the CTP. Representative Foley and several other committee members noted that the judge has the authority to keep offenders out of the CTP. Representative Foley recommended that the court needs to direct an offender into court services or else the court should prohibit an offender from being admitted into the CTP. Sheriff Murtaugh responded that the problem is that not all counties have community corrections resources to an extent that the county would be equipped to handle this situation. Sheriff Murtaugh noted that, for example, it takes time to get an offender into certain community corrections programs such as work release and in the meantime the county would be responsible for any of the offender's medical expenses.

Several Committee members discussed the following points which are not addressed in the CTP statute:

- ✓ What due process rights is an offender entitled to if the offender violated the conditions of the CTP? IC 35-38-1-26 requires a hearing if the offender violates a condition or rule of the CTP. Prosecutor Hamner noted that if prosecutor's offices are required to revoke the probation of offenders who violate the CTP, an increased caseload will be thrust onto the prosecutors. Most prosecutor's offices can hardly keep up with the caseloads that they currently have. Several Committee members and interested parties noted that the CTP statutes do not give enough direction on how to handle a situation if an offender who is placed in CTP violates the conditions of the program. Mr. Randy Koester stated that conduct rules may be promulgated locally. Mr. Koester further stated that it is the DOC's position that if an offender is accepted into CTP, the offender is no longer considered under the administration of the DOC. This point became controversial with some of the committee members.
- ✓ Who is responsible for notifying victims that an offender has been released into the CTP? Several Committee members stated that this issue needs to be explored more fully especially in light of Senate Enrolled Act 44, the new victim notification law that passed during the 1999 legislative session.

Mr. Beeson commented that there has been a 25% increase in employment in his county related to the criminal justice system. Counties need some state assistance to finance certain criminal justice initiatives. The counties are getting more responsibility but they are not

receiving enough financial assistance.

C. Ms. Shelia Hudson, Executive Director of Allen County Community Corrections, submitted a letter on the Allen County Community Corrections letterhead. The letter is marked as Exhibit B and raises various questions about the CTP statutes. Ms. Hudson also testified as follows:

❑ Community corrections programs are an alternative to incarceration. It costs \$19 per day to operate a community corrections program. If a court wants to transition an offender into a a community corrections program, the offender may need sustance abuse counseling, employment assistance, and help with socialization skills.

❑ The community corrections program in Allen County is well established. They begin working with the DOC and offenders six months before an offender's release. There are a variety of ways to implement a communitiy corrections program. In Allen County, an offender is transported directly o the community corrections program.

D. Mr. Eric Zimmerman, Chief Adult Probation Officer, Allen County, stated the following:

⇒ Whenever the court needs information about an offender, the responsibility is placed on the probation department to provide the information to the court. A probation officer must help to assess whether an offender is appropriate for CTP. For example, the probation officer could review whether the offender has already participated in the gamut of community corrections programs. Many offenders eligible for CTP have already been given community corrections opportunities.

⇒ In assessing whether an offender should be eligible for the CTP, the court will have to review the offender's previous history. Most of the information is coded and is not easily deciphered. The probation office will need to wait approximately two or three days to get the information to the judge. Several Committee members agreed that the mechanics of this situation need to be addressed so that an offender does not need to be housed in the county jail while the court awaits information on the offender.

Committee Questions and Discussion

Chair Meeks stated that the CTP was an effort to avoid having to build a 300 bed prison. The DOC discharges 9,000 offenders each year and has a prison population of 19,000. Chair Meeks noted that Indiana needs to get control over this situation.

E. Mr. Randy Koester, Department of Correction, General Counsel, Legislative Liaison, made the following remarks:

◆ When the CTP legislation was enacted, the DOC realized that communication was necessary for it to work. The DOC convened a meeting with all of the criminal justice stakeholders to discuss this law. There is merit behind the legislation. Meetings were also conducted with independent stakeholders. With proper communication with judges, prosecutors, and community corrections, the CTP law can work. The DOC wants the CTP law to be implemented fairly. The DOC notifies the counties before the offender

becomes eligible. It is the court's decision as to whether an offender is to be ordered into the CTP, and the DOC will not second guess that decision. As soon as the DOC knows of an offender being accepted into the CTP, the DOC will notify the victim. However, the DOC believes that the CTP statute is not consistent with the victim notification statute.

- ◆ The DOC has concerns about the court's tacit agreement to have an offender placed in the CTP in C and D felony cases. The DOC will make an effort to receive a court's affirmative response in these cases. The DOC will then notify the sheriff and prosecutor's office.

- ◆ The CTP statute presumes that an offender is given one sentence from one judge. It does not address situations in which an offender is given concurrent and consecutive sentences from two different courts. This situation needs to be more adequately addressed in the law.

- ◆ The CTP law went into effect on July 1, 1999. Thus far, there have been six offenders accepted into the CTP. However, no offenders have been moved from the DOC yet.

Committee Questions and Discussion

Judge Matsey stated that the statute does not address habitual offenders and it should. Judge Matsey is concerned that not addressing habitual offenders may create logistical problems resulting in the release of an offender in situations where no one wants that offender to be released.

Judge Ryan is concerned about what sanction will apply to an offender who has failed the CTP. Judge Ryan questioned whether the offender will be required to serve the remainder of the 30, 60, or 90 day period or if something more coercive is supposed to happen. Mr. Koester responded that due process must be afforded to the offender. The DOC could offer some guidance on the implementation of the due process. (Note that IC 35-38-1-26 addresses actions that may be taken if an offender violates CTP.)

Judge Ryan questioned whether the DOC would be available to provide the appropriate screening information so that a court is able to make a conscientious decision on whether to accept an offender into the CTP. Judge Ryan commented that the screening of offenders could create confusion at the local level because of additional time and resources that will be needed. Mr. Koester responded that the DOC will provide whatever information on the offender that they can, such as the offender's conduct history and sentencing summary. Mr. Koester stated that, due to confidentiality requirements, there may be some liability on the part of DOC if information is given too freely.

Judge Ryan stated that he would like to see some process put into place in which the court could send a packet of information to the DOC and then the DOC would return the appropriate documents to the court so that the sheriff will not have to house offenders while waiting for the paperwork. Judge Ryan stated that he wants the paperwork to be signed by the offender before the offender is transported.

Mr. Powell questioned whether the prosecutors are receiving the same paperwork as the judge with respect to an offender who is being reviewed for eligibility in the CTP. Mr. Powell is not sure that the prosecutor is getting the conduct history. Mr. Powell noted that the offender's conduct history is important because placement in the CTP should be a reward and not available to every offender. Currently, IC 11-10-11.5-4 provides that the prosecutor gets more limited information about the offender and the prosecutor does not receive the offender's conduct history. It was suggested that the CTP statutes should be amended to specify or expand who can receive the details of offender discipline.

Chair Meeks questioned how the \$7 per diem was selected. Mr. Koester responded that \$7 is the minimum per diem set by the CTP statute. Mr. Koester stated that at this point the DOC does not know how much the CTP is going to cost nor do they know how many offenders will be placed in it. Therefore, if the numbers warrant it, the per diem may be adjusted. Chair Meeks responded that individuals want to get involved in the CTP but the \$7 per diem is inadequate. Vice Chair Mellinger agreed that it is impractical for the CTP to be handled by a county for \$7 per day.

Chair Meeks made a motion recommending the drafting of a resolution urging the DOC to pay a per diem rate of \$35 instead of \$7 to a county for each offender that is placed in the community transition program. In addition, the DOC is urged to pay a per diem of \$20 to a county for each offender who is considered for the community transition program but is not placed in the program. Money received by the county would then be deposited in the community transition fund. The motion was seconded by Judge Ryan. The motion carried unanimously.

III. Adjournment.

Chair Meeks adjourned the meeting at approximately 12:30 p.m. The Committee's next two meetings are scheduled for September 22 and October 20 respectively. Both meetings are scheduled to begin at 10:00 a.m. and will be conducted in Room 404 of the State House.